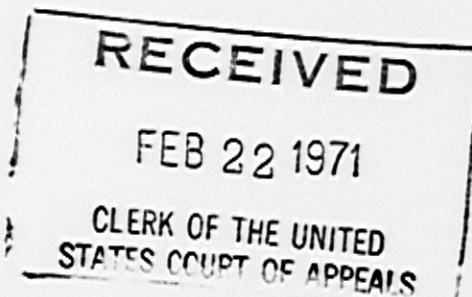


***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**



IN THE
UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 24,300

FILED FEB 26 1971

UNITED STATES OF AMERICA,

Nathan J. Paulson
CLERK

Appellee.

v.

ANDREW T. BELL,

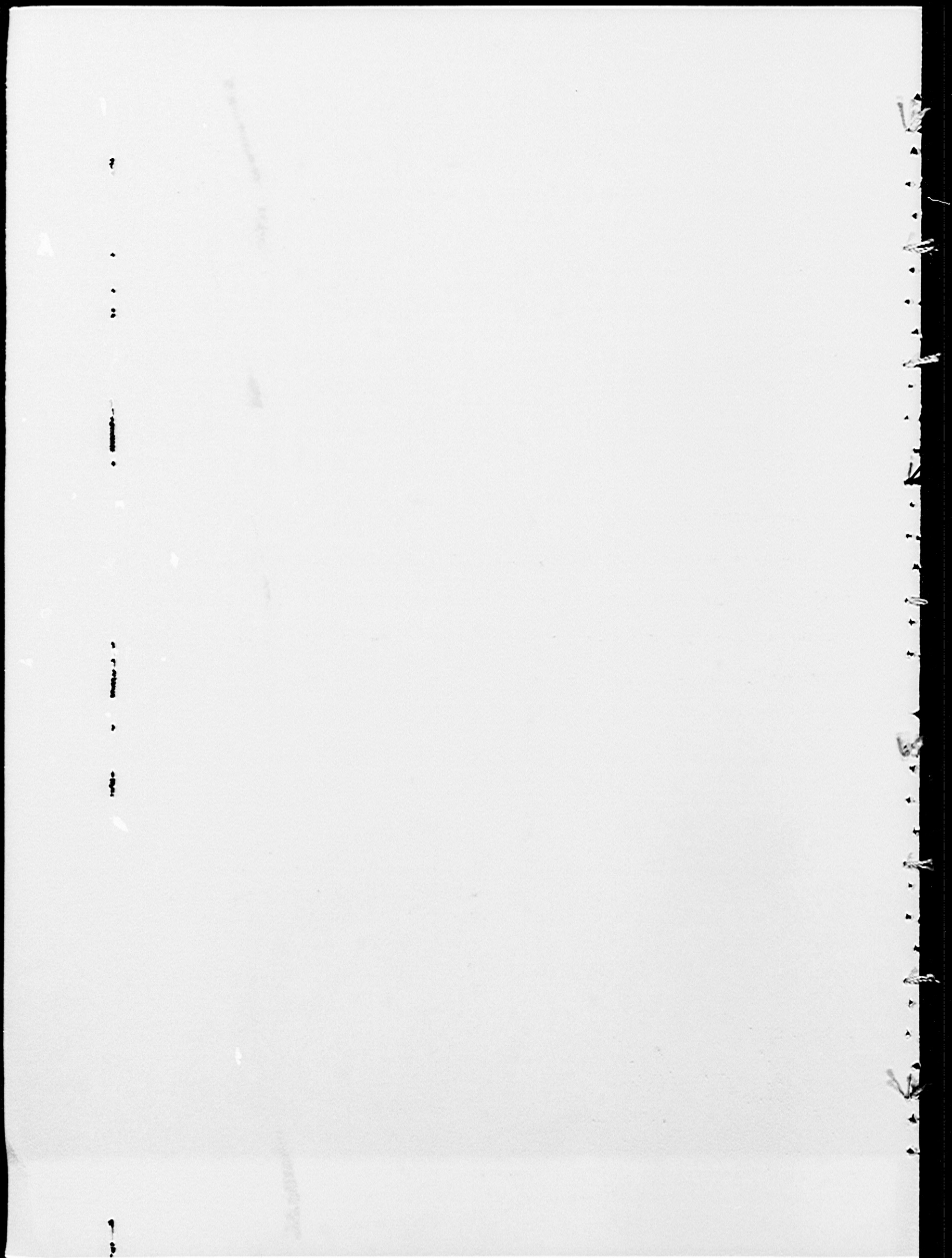
Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

APPENDIX

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App. 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on June 11, 1969

FILED IN OPEN COURT

AUG 19 1969

ROBERT M. STEARNS, CLERK

The United States of America

v.

Andrew T. Bell

:

:

:

Criminal No.

Grand Jury No. Original

Violation: 22 D. C. Code 3204

(Carrying Dangerous Weapon)

1344-69

The Grand Jury charges:

On or about March 11, 1969, within the District of Columbia, Andrew T. Bell did carry, openly and concealed on or about his person, a dangerous weapon, capable of being so concealed, that is, a pistol, without a license therefor issued as provided by law.

Thomas A. Flannery

Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

Wald Wamer
Foreman.

United States District Court for the District of Columbia

FILED

AUG 29 1969

UNITED STATES

vs.

ANDREW T. BELL

Defendant

ROBERT M. STEARNS, CLERK

CRIMINAL No. 1344-69

CHARGE CDW

PLEA OF DEFENDANT

On this 29th day of August, 19 69,
the defendant Andrew T. Bell, appearing in
proper person and by his attorney, being
arraigned in open Court upon the indictment, the substance of the charge being
stated to him, pleads not guilty thereto.

Defendant is remanded to D. C. Jail.

By direction of

HOWARD F. CONCORAN

Presiding Judge
Criminal Court # _____

ROBERT M. STEARNS, Clerk

Present:

United States Attorney

By Richard Hibey
Assistant United States Attorney

By Robert M. Stearns
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JAN 9 1970

United States

vs.

ROBERT M. STEARNS, Clerk Criminal No. 1344-69

Andrew T. Bell

CARRYING DANGEROUS WEAPON
(22 DCC 3204) (1 COUNT)

WAIVER OF TRIAL BY JURY

With consent of the United States Attorney and
the approval of the Court, the defendant waives his
right to trial by jury.

Andrew T. Bell
Defendant

John E. Shorter
Attorney for Defendant

I Consent:

Stephen A. Schuster
United States Attorney

APPROVED:

John E. Shorter
JUDGE

9 Jan 70

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES

vs.

ANDREW T. BELL

Defendant

Criminal Case No. 1344-69

CARRYING DANGEROUS WEAPON
(22 DCC 3204) (1 COUNT)

FILED

JAN 9 70

ROBERT M. STEARNS, Clerk

CERTIFICATE OF PROCEEDINGS ON JANUARY 9, 1970
(Date)

Case called for trial: defendant waives right to trial by
jury; waiver of trial by jury signed ^{and filed} in open Court: trial begun
and concluded; FINDING BY THE COURT: GUILTY AS INDICTED;
referred; defendant permitted to remain on bond pending imposition
of sentence.

Stephen Schuster
Assistant U. S. Attorney

By direction of

JOHN H. PRATT
Presiding Judge
Criminal Court No. 8

John A. Shorter
Defense counsel

A.M. Katherine Bryholdt
P.M.
Official Court Reporter

ROBERT M. STEARNS, Clerk

By James P. Capitanis
Deputy Clerk

P R O C E E D I N G S

* * *

ANDREW A. JOHNSON

* * *

DIRECT EXAMINATION

BY MR. SCHUSTER:

* * *

THE COURT: Go ahead, Mr. Schuster.

MR. SCHUSTER: Thank you, Your Honor.

Q Officer Johnson, state your name and assignment, please.

A Andrew A. Johnson, plainclothesman, assigned to the Narcotics Squad, Metropolitan Police Department.

Q Officer, I call your attention to Tuesday, March 11th, around 2:25 p.m., were you on duty?

A Yes, sir, I was.

Q Were you on duty with anybody else?

A Yes, sir, I was.

Q Who was that?

A That was Plainclothesman Carl W. Brooks.

Q Were you driving or on foot?

A I was driving. We were driving.

Q Now, at that time did you see anybody who is present in the courtroom today?

A Yes, sir, I do.

Q And who is that?

A The three defendants, Mrs. Williams, seated, with the

printed dress on; Mr. Andrew T. Bell, he's seated with the pink colored shirt; and Mr. Frank Rollins.

MR. SCHUSTER: May the record reflect that the witness has identified the defendants, Your Honor?

THE COURT: The record will so show.

BY MR. SCHUSTER:

Q Where did you see them, Officer?

A They were parked in an automobile, I believe it was a '64 Oldsmobile, with a black top, green bottom, parked in the 1200 block of 7th Street, Northwest, on the east side of the street.

Q Now, Officer Johnson, what drew your attention to these three subjects?

A As we were cruising north in the 1200 block of 7th Street, I observed, along with Officer Brooks, a known narcotic violator by the name of Junious Montague, with his hand inside of this auto.

6 Q How long have you known Mr. Montague?

A Personally, I hadn't known him too long. I had talked to him on the street, and I had at one time run a background check on him, and through that I found that he had been arrested in Baltimore for a drug violation.

Q How long have you been a narcotics officer, Officer Johnson?

A For two years and two months.

Q All right. And after you observed -- how many people were seated in this automobile?

A There were four, four persons in the automobile.

Q Do you know, respectively, where each of the defendants were seated in the automobile?

A Yes, sir, I do.

Q Where were they seated, Officer Johnson?

A The defendant, Mr. Rollins, was seated behind the wheel of the auto; Miss Williams was seated in the rear, on the right side of the auto; and Mr. Bell was seated directly behind the driver in the rear, which would be on the left. And there was an unidentified subject seated in the front of the automobile.

Q All right. Now, what did you do when you saw Mr. Montague with his hand inside the window of this automobile?

A We pulled the cruiser to the front of the automobile, stopped and got out of the cruiser. I approached the auto on the passenger side, that is, on the curb side; and Officer Brooks approached the auto on the driver's side. And he approached Mr. Rollins and asked for his operator's permit and his registration card.

Q Now, at this time where was the fourth person who was seated in the front seat and Mr. Montague?

A As we pulled the cruiser in front of the auto and stopped, we had walked north, he had walked away from the car. He was still there when I approached the car. As a matter of

fact, I talked to this subject.

THE COURT: What subject do you mean?

THE WITNESS: This is the unidentified subject.
That is the fourth subject.

THE COURT: The one that was in the right front?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. SCHUSTER:

Q All right. And what did you do when you approached that right side, Officer Johnson?

A I talked to the subject, and I can't remember his name, at the time.

Q He was not arrested?

A No, he was not. He got out of the auto, and my attention was diverted to the two subjects in the back of the auto.

Q And what drew your attention to the two subjects in the back of the auto?

8 A At this time I observed a plastic bag, and in the bag was a quantity of gelatin capsules containing a white powder.

THE COURT: Where did you see the gelatin capsules?

THE WITNESS: I saw them through the cellophane bag, Your Honor.

THE COURT: Where was the bag located?

THE WITNESS: It was on the seat of the auto, in between the defendants Williams and Bell.

BY MR. SCHUSTER:

Q Now, through what window of the automobile did you observe this, Officer Johnson, do you recall?

A Well, it was through the front, right front window.

Q And what kind of plastic bag was this, Officer?

A It's a type of bag, I guess you would call it maybe that you put a sandwich in. It's that type of bag.

Q Were the capsules loose in this bag?

A Yes, sir, they were.

Q What did you do when you saw this bag of gelatin capsules?

A I asked the defendants, Miss Williams and Mr. Bell, to step out of the auto. They did step out. I went in the auto and recovered the capsules.

I placed Miss Bell -- Miss Williams and Mr. Bell under arrest for the Harrison Narcotics Act, and Mr. Rollins was placed under arrest by Officer Brooks.

Q And did you search Miss Williams and Mr. Bell incident to that arrest?

A I did not search Miss Williams, but I did search Mr. Bell, and I recovered from his righthand coat pocket a .35 caliber five-shot revolver.

Q Officer Johnson, did you conduct a field test on the capsules which were recovered from the automobile?

A Yes, sir. When I returned to the Narcotics Squad

office I conducted a preliminary field test of a portion of the white powder from one of the capsules, and I received a positive color reaction, indicating the presence of a drug of the opiate group.

Q Did you determine who this car was registered to, Officer Johnson?

A I did not check that out, sir.

Q Did Mr. Rollins produce the operator's license and the registration card?

A Yes, he did produce them, and showed that to Officer Brooks. I did not see the registration card or his license.

Q Now, in your two-plus years as a narcotics officer, Officer Johnson, how many capsules of heroin have you seen?

A That would be very hard to say. But in the daily course of my activities as a narcotics officer, I come across quite a few capsules, and loose white powder also.

10 Q In your daily course as a narcotics officer, Officer Johnson, now would you say you would be able to notice what you would suspect as capsules of heroin by sight?

A Yes, sir, I would.

CROSS EXAMINATION * * *

11 Q The only thing that attracted your attention to this car was the fact that you saw this man Montague, was it?

A Montague.

Q This man Montague was standing alongside the car?

A With his hand inside the window.

Q With his hand inside the window?

A Yes, sir.

Q That was the only thing?

12 A Right.

Q Thereafter, Officer, you went to the right front of this automobile, did you not?

A Yes, sir, I did.

Q And there you had a conversation with a man that was sitting in the right front seat?

A Yes, sir.

Q And you knew that man, did you not?

A No, sir, I did not.

Q That man was Conrad Golden, was he not?

A I had never seen the gentleman in my life before, sir.

* * *

A I did have a conversation with him.

Q What did you talk about?

A He produced a card with his name and picture on it.

Q What was that card he produced?

A I think it was one of these programs that he was involved in on Pennsylvania Avenue, Southeast. I think it's in the 900 block. I don't recall the type of program it is.

* * *

13 Q Did you ask Mr. Golden to get out of the car?

A Yes, sir, I did.

Q Did he get out?

A Yes, sir, he did.

Q And after you had talked to this man, didn't you then order Mrs. Williams to alight from the car?

A I ordered Miss Williams and Mr. Bell at the same time to get out of the car.

Q Didn't you then search a paper bag that Mrs. Williams had?

A No, sir, I did not search the bag.

Q Didn't you find that there was candy and cookies in that bag?

A No, sir, I did not.

Q Did you see any brown paper bag at all at the scene?

A I don't recall seeing a paper bag at the scene.

Q Didn't you, in fact, order Miss Williams out of the car first?

A I ordered Miss Williams and Mr. Bell out at the same time.

14 Q Did they each get out at the same time?

A Yes, they did. Miss Williams got out first, and then Mr. Bell followed her.

Q Now, as I understand you from your testimony, there came a time when you saw on the back seat of this car a plastic bag?

A Yes, sir.

Q That had some capsules in it?

A Yes, sir.

Q Just precisely in this chain of events, over what period in the chain of events did you see that?

A Well, as I was talking to the gentleman who was in the front of the auto, I was constantly looking in the back. There were two other subjects in the back, and for my own personal safety I was sort of looking out of the corner of my eye, trying to keep them under observation, too.

Q As I understand your testimony, before you said that you observed these capsules by looking through the windshield?

A No, I did not say that. I said through the right window on the passenger side.

Q Was this before you talked to the man in the right front seat, or was it after you talked to the man in the right front seat that you observed these capsules, or while you were talking to him?

A This was during the conversation that I had with this gentleman.

* * *

Q Were you bending down?

A Yes, sir.

Q Were you bending down and talking to this man at the same time?

A Yes, sir.

Q Now, just precisely where was this bag?

This plastic bag that you saw in the back seat?

A It was on the back seat in between the defendants, Miss Williams and Mr. Bell. It was down --

Q Was it closer to Mr. Bell or closer to Miss Williams?

A It was closer to Bell.

Q Was it down when you started to take it?

A Well, now, the back seat inclines down. (Indicating) Where the seat fits into the groove down there, it was on the incline, sitting next to the back of the seat.

Q Was it partially pushed down between the seat? You know, between the seat and the back of the seat?

A No, sir, it was not.

Q Was the bag rolled up, sort of crumpled up?

A I believe the top of the bag was crumpled. (Indicating.)

Q Was it tied?

A I really don't recall, sir, whether it was tied.

Q Now, when you made this observation, was it about equi-distant between Mr. Bell and Miss Williams, or was it closer to one than it was to the other?

A The bag was closer to Mr. Bell than Miss Williams.

Q And is this a plastic bag that was rather translucent?

A Yes, sir. You can see through the bag.

Q I didn't understand you. What did you say? Did you say you can?

A You can.

Q Can you see through the bag clearly, like a pane of glass, or would it be more like a bathroom-type window, where you can see through maybe ---

THE COURT: He said it was similar to one of these "Baggies" that you put a sandwich in, as he described it. You can see through it.

* * *

18 Q Could you, Officer, see what was in the bag clearly?

A I could see what was in the bag.

Q Could you see what was in the bag clearly?

A In reference to a window pane and the bag, a window pane is much clearer, but I could see what was in the bag through that bag.

Q You didn't know at that time whether what was in the bag was a narcotic or not, did you?

A No, I didn't.

* * *

CROSS-EXAMINATION

BY MR. LAMBETH:

* * *

19 Q Now, at that time you didn't see anything in the rear seat, did you?

A No, sir, I did not.

* * *

21 Q When you normally question a person, do you bend over, or what do you do?

A In these circumstances, with people in the rear of

the car, for my own protection, I would.

Q You didn't seek to search Mr. Golden, did you?

A No, sir, I did not.

Q After you saw this bag in the rear seat, you just forgot about Mr. Golden, is that right?

A More or less, yes.

Q You let him leave?

A Well, he walked away.

Q You made no attempt to stop him?

A No, I did not.

* * *

22 Q Why did you initially ask Mr. Golden to get out of the car?

A I really don't know. I wanted him to get out --

Q You don't know. You didn't know him before this afternoon, you hadn't seen him before?

A No, sir. I had never seen the gentleman in my life.

Q Then after you had him out of the car, that's when you glanced at this bag?

A Yes, sir.

Q Did you recognize Montague as your police car or vehicle pulled up near Mr. Rollins' automobile?

A Yes, sir.

* * *

24 Q Did you see Montague's hands or hand in the automobile?

A Yes, sir, I did.

Q Both hands or one hand?

A. It was one hand.

Q. Was there anything in his hand?

A. I couldn't see if there was anything in his hand.

Q. He could have been shaking hands with the driver or about to shake hands, could he not?

A. It very well could be.

THE COURT: What you are saying is that part of the arm or one hand was inside the automobile, is that correct?

THE WITNESS: That's correct, Your Honor.

BY MR. LAMBETH:

Q. Montague was not taken into custody, was he?

A. No, he was not.

Q. He just disappeared?

A. He sure did disappear.

* * *

26 A. The door of the auto was open, and I had a straight view into the auto. (Indicating.)

Q. When you first observed it, what were Miss Williams and Mr. Bell doing?

A. They were seated in the auto.

Q. Did either of them have their hands on the bag?

A. No, sir, they did not.

Q. Was any article of theirs or anything concealing or obstructing it?

A. No, it was not.

Q. Now, when did you seize it?

A. After they got out of the auto. After I asked them to get out, I went in and seized the bag.

Q. I see. And you testified that Mr. Bell slid across the back seat to get out.

Didn't he knock it over?

A. No, he didn't.

27 Q. Didn't he touch it in any way?

A. No, sir, he didn't.

Q. Did he make -- I mean, was the bag moved at all?

A. The bag was not disturbed.

Q. Now, Officer, after Miss Williams and Mr. Bell got out, you searched the car, did you not?

A. I went in and seized the bag.

Q. Did you not also make a search of the car?

A. I made a search of the car after they were placed under arrest.

Q. After they were placed under arrest?

A. That was after I had seized the bag.

Q. What time was this that they were placed under arrest?

A. After I seized the bag, they were placed under arrest for violation of the Harrison Narcotics Act and advised of their rights.

Q. Was it then that you searched the car?

A. Yes, sir.

* * *

28 Q Can you explain a little better the position of the cellophane bag?

A You know where the seat inclines, the seat is here, and there's an incline in the back, it was sitting on that incline, resting against the back of the seat. (Indicating.)

Q So it was really vertical, resting against the back part of the seat, as opposed to lying flat on the back seat, is that right?

* * *

29 MR. ARONOFF: Well, I would like to establish the exact position of the bag.

BY MR. ARONOFF:

Q Was it lying flat?

A It was lying flat on the seat itself, but it was touching the back, where you rest your back against the back rest of the seat.

Q When you stopped at the automobile, first of all, had you seen Mr. Montague before?

A Yes, sir, I had seen him before.

Q When you approached the car, did Mr. Montague withdraw his hand from the car?

A As we pulled the cruiser in front of the automobile, Mr. Montague had walked away, and he had walked north on 7th Street.

Q Did you make any attempt to stop him?

A No, sir, I did not.

Q When you saw him walk away, did you see if anyone had picked up something from his outstretched hand in the front seat?

A No, sir, I did not.

Q Did you see anything transpire with Mr. Montague's hand?

A No, sir, I did not.

Q You did not. With the two gentlemen in the front seat?

A No, sir.

Q So you observed nothing in so far as a possible business transaction going on between them, is that right?

A I observed no transaction.

* * *

Q And it wasn't until you got your hands on that bag that you felt that there were narcotics in that bag?

A That's right, sir. When I saw the bag and what I saw in the bag, with my experience, I believed that to be heroin or a narcotic drug.

Q This was when you got your hands on the bag and were looking at it?

THE COURT: As a matter of fact, you didn't know there were actually narcotics in it until you had a chemist's examination, isn't that correct?

THE WITNESS: Yes, sir.

* * *

REDIRECT EXAMINATION

37 Q Officer Johnson, in your experience as a narcotics officer, do you have knowledge of the drug traffic in the 1200 block of 7th Street, Northwest?

A Yes, sir, I do.

Q Now, could you tell the Court, sir, in your experience, how you would characterize that drug traffic in that location?

MR. EGGERS: I object. The officer testified that the only thing that caused him to stop was because he saw this man there.

THE COURT: I think what Mr. Schuster is asking is how he happened to be cruising in that area.

THE WITNESS: Yes, sir. That is between 7th and --

BY MR. SCHUSTER:

Q Any particular reason why you centered on this area of this city to cruise?

A It's an area that is frequented by narcotics users and narcotic dealers.

Q And what was your original intention when you approached this automobile, Officer Johnson?

A Was to talk to the occupants of the auto.

Q In other words, to carry on an investigation?

A This is correct.

* * *

39 SHARON E. WILLIAMS

* * *

DIRECT EXAMINATION

BY MR. ARONOFF:

Q Will you state your full name?

A Sharon Elizabeth Williams.

* * *

BY MR. ARONOFF:

Q Was there at the time of your arrest or immediately prior thereto a bag lying on the back seat of the car?

A Yes, there was.

Q Could you describe where it was located?

41 A It was located behind the seat, behind me.

Q Was it in view?

A No, it was not.

Q Now, can you describe a little better the exact location? You say it was in back of the seat?

A It was down upon the part where you sit, reach the back. It was down in between that crease, concealed.

Q And was any part of it visible to the eye?

A No, it was not.

THE COURT: How long had it been there?

THE WITNESS: I had just put it there.

THE COURT: You had just put it there?

THE WITNESS: Yes.

* * *

9 THE COURT: Mr. Bell, we have a document that you have signed, waiver of trial by jury, also signed by Mr. Shorter, your attorney, and it has been consented to by Mr. Schuster.

I would like to advise you that you have the right to a speedy trial by jury, and ask you whether you understand, by signing this document, that you are giving up and waiving your right to a trial by jury.

10 Do you understand that?

THE DEFENDANT: Yes, I do.

THE COURT: And you are doing this voluntarily and of your own free will, not because of any coercion from anybody else?

THE DEFENDANT: That's correct.

THE COURT: Very well.

MR. SCHUSTER: Briefly, Your Honor, the indictment

On or about March 11, 1969, within the District of Columbia, Andrew T. Bell did carry, openly and concealed on or about his person, a dangerous weapon, capable of being so concealed, that is, a pistol, without a license therefor issued as provided by law.

The government's first witness will be Officer Andrew Johnson.

THE COURT: All right.

Thereupon

ANDREW A. JOHNSON

called as a witness by the government, being first sworn, was examined and testified as follows:

MR. SCHUSTER: Preliminarily, Your Honor, it has been stipulated between the government and the defendant that Andrew T. Bell, the defendant in this case, on March 11, 1969, did not have a license to carry a pistol in the District of Columbia.

MR. SHORTER: Correct.

THE COURT: Thank you, Mr. Shorter.

DIRECT EXAMINATION

BY MR. SCHUSTER:

Q Officer Johnson, will you state your name and present assignment?

A Andrew A. Johnson, plainclothesman, assigned to the Homicide Unit, Metropolitan Police Department.

Q How were you assigned on March 11th, 1969?

A I was assigned to the Narcotics Section, Metropolitan Police Department.

Q And I call your attention to the time of 2:25 p.m., were you on duty at that time?

A Yes, I was.

Q Where, in particular, were you on duty?

A I was in the 1200 block of 7th Street, Northwest.

Q Was that in the District of Columbia?

A Yes, it is.

Q Now, at that time did you see someone who is present in the courtroom today?

A Yes, sir, I do.

Q And who is that?

A It's the defendant, Mr. Bell. And he has on a green sweater-shirt (Indicating).

12 MR. SCHUSTER: May the record reflect that the witness has identified the defendant; Your Honor.

THE COURT: The record will so show.

BY MR. SCHUSTER:

Q At that time did you have occasion to arrest Mr. Bell?

A Yes, sir, I did.

Q Pursuant to that arrest, did you search him?

A Yes, sir, I did.

Q What, if anything, did you recover?

A I recovered from his right inside overcoat pocket one five-shot .38 caliber revolver, silver in color, with black tape wrapped around the handle.

MR. SCHUSTER: With the Court's permission, I would ask that these be marked Government's Exhibit No. 1 for identification and Government's Exhibit No. 2 for identification.

THE COURT: They will be so marked.

The .38 caliber revolver is No. 1; and No. 2, I take it, are the shells.

MR. SCHUSTER: That's correct, Your Honor.

(Government's Exhibit No. 1, a Revolver,
was marked for identification.)

(Government's Exhibit No. 2, Shells,
was marked for identification.)

BY MR. SCHUSTER:

Q Officer Johnson, I show you what has been marked as
13 Government Exhibit No. 1 for identification, and ask you to
look at this, and see if you can identify it?

A (Examining the exhibit.) Yes, sir, I can.

Q And what is that?

A It's the .38 caliber revolver that I recovered from
the defendant's overcoat pocket.

Q How do you so identify it?

A My initials are scratched on the frame of the revolver.

Q I show you what has been marked as Government Exhibit
No. 2 for identification, an envelope.

Will you examine that envelope and tell us whether
you can identify its contents?

A (Examining the exhibit.) Yes, sir, Yes. It's
five live .38 caliber cartridges that were unloaded from this
revolver by me.

Q And how do you so identify those?

A My initials are placed on this envelope in which I
placed the five shells.

Q Did you have occasion to have this weapon test-fired,
Officer Johnson?

A Yes, sir. I did have it test-fired.

Q When was that done?

A It was test-fired today.

Q And was the gun operable?

A Yes, sir, it was.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,300

UNITED STATES OF AMERICA,
Appellee.

v.

ANDREW T. BELL,
Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 26 1991

Nathan J. Sanders
COUNSEL

John A. Shorter, Jr.
508 Fifth Street, N.W.
Washington, D.C. 20001
Counsel for Appellant

(i)

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*Cases Chiefly Relied Upon.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,300

UNITED STATES OF AMERICA,

Appellee.

v.

ANDREW T. BELL,

Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

STATEMENT OF ISSUES PRESENTED*

The issues presented by this case are:

1. Whether a police officer may detain, interrogate and search law-abiding citizens in the absence of suspicious circumstances.

*This case has not previously been before this Court.

2. Whether, in the absence of suspicious circumstances, there was probable cause to believe that a bag containing capsules and white powder was, in fact, a narcotic drug, necessitating the arrest, search and seizure of the possessor.

REFERENCES TO RULINGS—NONE

STATEMENT OF THE CASE

SUMMARY OF PROCEEDINGS

The appellant was arrested and charged with a violation of Section 3204, Title 22 (Carrying A Concealed Weapon) of the District of Columbia Code. At the time of his arrest the appellant and other persons were also charged with a violation of the narcotics laws but those charges are not before this Court.

On October 9, 1969 prior to the trial on the aforesaid weapons charge and the narcotics charge (Cr. No. 1364-69), a hearing on a motion to suppress was had culminating in a denial of that motion by the Court, the Honorable John H. Pratt, presiding. Trial was commenced on January 9, 1970 before Judge Pratt after a waiver of trial by jury. The appellant was found guilty as charged and sentenced on March 10, 1970 to a term of from (2) two to (6) six years imprisonment. A timely notice of appeal was filed on the date of sentencing.

THE MOTION TO SUPPRESS

Officer Andrew A. Johnson testified on direct examination that he was a plainclothes officer assigned to the Narcotics Squad of the Metropolitan Police Department (Tr. 4). On Tuesday, March 11, 1969, the officer accompanied by a fellow plainclothesman, Carl W. Brooks, was traveling in the 1200 block of 7th Street, N.W.

The officers noticed a known narcotic violator with his hand inside an automobile (Tr. 5). There were four other persons seated inside the auto.¹ The officers pulled their cruiser to the front of this auto, slighted and approached the vehicle in which this defendant was sitting. Officer Johnson approached the auto on the passenger side while his partner approached the driver's side requesting an operator's permit and registration card. The person sitting in the right front seat of the car got out of the auto, spoke to Officer Johnson and then walked away from the auto (Tr. 7).

Officer Johnson observed a plastic bag which contained a quantity of gelatin capsules. These capsules themselves contained a white powder. This bag was alleged to be on the rear seat of the auto between Sharon E. Williams and the appellant, Bell. The officer requested Williams and Bell to alight, he recovered the bag and then placed the passengers under arrest for violation of the Harrison Narcotics Act (Tr. 8). A search of the appellant, Bell, produced the pistol which was the basis of the appellant's trial for carrying a dangerous weapon.

Officer Johnson then conducted a preliminary field test on the seized powder and determined that it was a derivative of the opiate group (Tr. 9).

On cross-examination, the officer stated that he had requested the passenger in the front seat to get out of the car (Tr. 13). The officer indicated that he saw the bag while he was bending down and talking to the fourth person outside of the car (Tr. 16). Further cross-examination indicated that the officer asked one "Golden"

¹ Three of the occupants, Frank Rollins, Sharon E. Williams, and the appellant herein, Andrew T. Bell, were charged in another case with a narcotic offense arising out of certain narcotics found in the automobile.

to get out of the car and produce some identification. At that time, the officer did not see anything in the rear seat (Tr. 19). The officer did not know why he asked Mr. Golden to alight from the auto (Tr. 22), he merely wanted him to get out. He did not observe any possible business transaction between Montaque and the occupants of the auto (Tr. 30).

Sharon E. Williams was called as a witness for the defense on the Motion (Tr. 40). She testified that the bag in question was located down behind the seat, in back of her, and further that it was not in the plain view of the officer.

ARGUMENT

I

THE DETENTION AND INTERROGATION OF THE OCCUPANTS OF THE VEHICLE WAS A SHAM AND AN EXCUSE TO SEARCH FOR CONTRABAND.

This appellant's arrest on a weapons charge is predicated upon a search of his person after an officer discovered a transparent bag which contained capsules full of a white powder on the seat of the automobile in which he was an occupant. The officer noticed an individual who was allegedly a known narcotics violator standing next to an automobile with his hand in the auto. There was no untoward behavior on the part of this violator nor by the four occupants of the auto. To be sure the officer observed nothing that could reasonably be construed as a possible business transaction. His only motive in approaching the automobile was to carry out an "investigation."

Appellant readily admits that police officers are empowered to make "... a routine spot check of a motorist to ascertain if he has con-

plied with the requirements of possession of a permit . . . provided such check is not used as a substitute for a search for evidence of some possible crime unrelated to possession of a driver's permit." *Mincy v. District of Columbia* (D.C. App.) 218 A.2d 507 (1966).

Appellant suggests that the action of the police were merely a sham to allow them to search the vehicle and its occupants for contraband. *White v. United States*, 106 U.S. App. D.C. 246 271 F.2d 829 (1959); *Taglanore v. United States*, 291 F.2d 262 (9th Cir. 1961). It is worth noting that: (1) The arresting officers were plainclothes narcotics men, not traffic officers. (2) The vehicle was parked and stationary. (3) It was mid-afternoon on a city street and the officer did not recognize the occupants of the vehicle. (4) The narcotics violator had left the area of the auto. The question then is what were the police going to investigate? Certainly no criminal activity is alleged, on the contrary, the officer observed no transaction.

The officer readily admitted that when he first approached the automobile, he could not see any package in view; it was only after he bent down that he allegedly saw the transparent bag.² The officer had no right to accost an otherwise law-abiding occupant of an automobile and require that he produce identification. The officer, in fact, did not even know why he asked the passenger to get out of the car.

²Officer Johnson admitted that he seized the packet prior to arrest because it was in plain view; while Sharon E. Williams stated it was beneath the seat. This same person pleaded guilty to possession of the narcotics in Criminal No. 13464-69.

ARGUMENT

II

**THE ARREST, SEARCH AND SEIZURE OF THE APPELLANT
WAS CONTRARY TO THE CONSTITUTIONAL PROHIBITION
AGAINST UNREASONABLE SEARCHES AND SEIZURES.**

It is axiomatic that a police officer may not arrest a citizen on less than probable cause. Probable cause exists where an officer has reasonable grounds to believe that a crime has been committed and that the person arrested did in fact commit the crime. *Bailey v. United States*, 128 U.S. App. D.C. 354, 389 F.2d 305. *Pendegrast v. United States*, 135 U.S. App. D.C. 20, 416 F.2d 776 (1969).

It is apparent from the testimony, that the officer did not know at the time he seized the articles that it contained narcotic drugs.

"There must be probable cause before the search begins for a search is not to be made legal by what it turns up. In law it is good or bad when it starts and does not change character from its success." *United States v. Di Re*, 332 U.S. 581, 595, 68 S.Ct. 222, 229 92 L.Ed 210 (1948).

Appellant would initially urge to this Court that the initial confrontation between the officers and the occupants of the automobile was entirely unreasonable. There was neither "suspicious, circumstances" nor "unusual conduct" to warrant their intrusion on otherwise law-abiding citizens, *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889; see also *Dorsey v. United States*, 125 U.S. App. D.C. 355, 358, 372 F.2d 928, 931 (1967); *Bailey v. United States*, 128 U.S. App. D.C. 354, 389 F.2d 305 (1967).

Appellant suggests that the "plain view" doctrine as espoused in *Ker v. California*, 374 U.S. 23, 83 S.Ct 1623, 10 L.Ed.2d 726

(1963), is inapposite to the factual setting in this case. That case permitted the introduction in evidence, objects which fell within the plain view of an officer "who has a right to be in the position to have that view." (emphasis added). We submit that but for the unwarranted accosting of the occupants of the vehicle as well as the ordering of a passenger out of the said vehicle the officer would not have seen the bag of capsules. Certainly the doctrine set forth in *Sibron v. State of New York*, 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed. 2d 917 (1968) dispel the notion that association with narcotic offenders gives rise to any inference of criminality.

"The inference that persons who talk to narcotic addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the police upon an individual's personal security. Nothing resembling probable cause existed until after the search had turned up the envelope of heroin, *Sibron, supra*.

Appellant would further submit to this Court that a bag of capsules containing white powder, standing alone does not give a policeman probable cause to make an arrest. Appellee would certainly raise to the fore *Dorsey v. United States*, 372 F.2d 928. In the light of *Sibron, supra*, we would question its vitality today. Notwithstanding that view, appellant believes that it is clearly distinguishable on its facts from the instant case. In *Dorsey*, the officers knew the occupants of the parked auto were narcotic traffickers and users, it was 11:00 p.m. on an unsavory street in the District. Clearly, it cannot be argued that the instant factual setting is parallel to *Dorsey*.

It follows that the arrest and search of the appellant was tainted by the earlier unreasonable conduct of the officer.

CONCLUSION

Based on the foregoing, the appellant believes that the lower court erred in not granting appellant's motion to suppress.

Respectfully submitted,

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Counsel for Appellant

BRIEF FOR APPELLEE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,306

UNITED STATES OF AMERICA, APPELLER

v.

ANDREW T. BELL, APPELLANT

Appeal from the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED NOV 12 1970

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United States Attorney.

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Assistant United States Attorneys.

OF No. 1344-68

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OTHER REFERENCES

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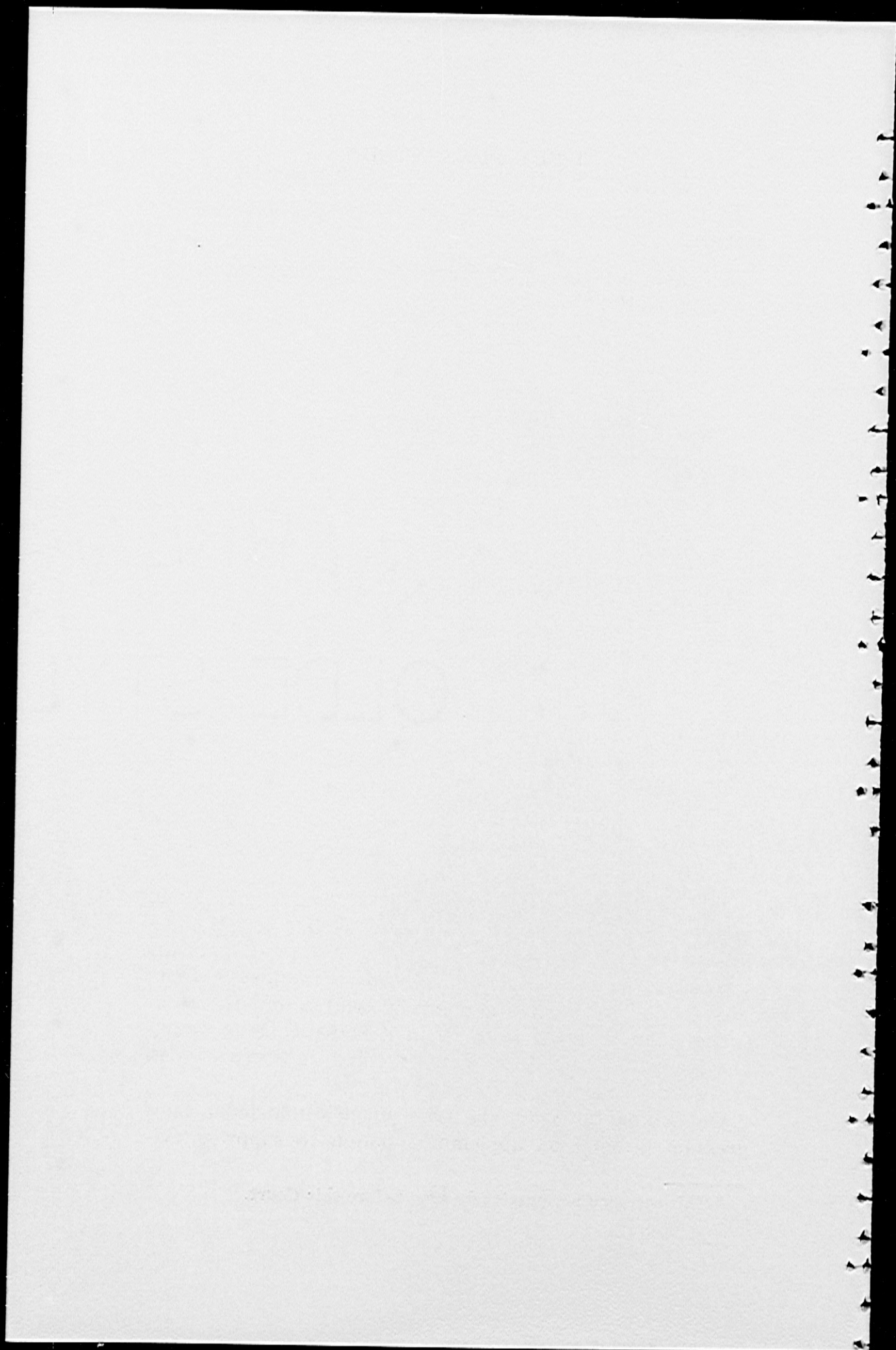
* Cases chiefly relied upon are marked by asterisks.

ISSUE PRESENTED *

In the opinion of appellee the following issue is presented:

Whether the search of appellant was incident to a lawful arrest?

* This case has not previously been before this Court.



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,300

UNITED STATES OF AMERICA, APPELLEE

v.

ANDREW T. BELL, APPELLANT

**Appeal from the United States District Court
for the District of Columbia**

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

In a one-count indictment filed on August 19, 1969, appellant was charged with carrying a pistol without a license in violation of 22 D.C. Code § 3204. Appellant waived his right to trial by jury and on January 9, 1970, was found guilty after a non-jury trial before the Honorable John H. Pratt in the United States District Court. On March 10 appellant was sentenced to serve two to six years. This appeal followed.

On October 9, 1969, the trial judge conducted a suppression hearing on appellant's motion to suppress evi-

dence. At that hearing, Metropolitan Police Officer Andrew A. Johnson testified that on March 11, 1969, at about 2:25 p.m., he and his partner, Officer Carl Brooks, were cruising in the 1200 block of 7th Street, Northwest, an area which Officer Johnson knew to be "frequented by narcotics users and narcotics dealers" (Tr. 4-5, 37). Officer Johnson saw one Junius Montague, a man known to him as a past narcotics violator, place his hand inside the window of a parked car occupied by three men and a woman. As Montague withdrew his hand and walked away, the police cruiser stopped alongside the car (Tr. 5, 11, 24). Officer Brooks approached the driver's side of the automobile; Officer Johnson walked toward the passenger side. While Brooks asked the driver to produce a permit and registration, Johnson asked the front seat passenger to produce identification. At Johnson's request the passenger got out of the car. A brief conversation ensued. Officer Johnson, to insure his own personal safety, looked in the back seat, which was occupied by appellant and a female passenger (Tr. 5-7, 12-13, 18-19, 21). In plain view, on the seat between appellant and the woman, was a clear plastic bag containing a quantity of gelatin capsules filled with a white powder (Tr. 8, 17-18, 28-29). On the basis of over two years' experience with the Narcotics Squad, Johnson concluded that the bag contained heroin or another narcotic drug. He ordered appellant and the woman out of the car, seized the bag, and placed them under arrest for violating the narcotics laws. Officer Johnson then searched appellant and recovered from his righthand coat pocket a .35 caliber five-shot revolver (Tr. 8-10).

Sharon Williams testified on appellant's behalf. She said that she was the woman in the back seat of the car on that day. She testified that the plastic bag in question was in fact in the rear seat but that it was not in plain view, since she had concealed it by pushing it behind her into the back part of the seat (Tr. 40-41).

At the subsequent non-jury trial only Officer Johnson testified. He related the events which occurred on March

11 and testified that the gun recovered from appellant had been test-fired in his presence and was operable (Tr. 11-15). It was stipulated by counsel for both sides that on the date in question appellant did not possess a license to carry a gun in the District of Columbia (Tr. 10).

ARGUMENT

The search of appellant which produced the pistol was incident to a valid arrest and was therefore justified.

Appellant argues first that the "detention and interrogation of the occupants of the vehicle was a sham and an excuse to search for contraband" (Appellant's Brief, p. 5). That position is fatally defective since there was in fact no search prior to appellant's arrest. The plastic bag seized was not on appellant's person but in plain view on the back seat of the car and was seen by a police officer who was standing on a public street. Appellant, however, suggests that even though the officer was on a public street, the plain view¹ doctrine should not apply because "the officer had no right to accost an otherwise law-abiding occupant of an automobile and require that he produce identification" (Appellant's Brief, p. 6). Whatever the merit of that position,² however, appellant has no standing to assert the infringement of a right possessed, if at all, by someone other than himself. *Alderman v. United States*, 394 U.S. 165, 171-175 (1969).

Appellant argues alternatively that "a bag of capsules containing white powder, standing alone, does not give a policeman probable cause to make an arrest" (Appel-

¹ *Harris v. United States*, 390 U.S. 234 (1968).

² We do not, of course, concede for a moment that a police officer does not have the right briefly to question the occupant of an automobile parked in an area of high drug traffic immediately after a known narcotics violator has visited the same car. "If policemen are to serve any purpose of detecting and preventing crime by being out on the streets at all, they must be able to take a closer look at challenging situations as they encounter them." *Dorsey v. United States*, 125 U.S. App. D.C. 355, 358, 372 F.2d 928, 931 (1967).

lant's Brief, p. 8). Appellant, however, forgets that in addition to the appearance of the bag and gelatin capsules, the following facts were present:

1. The officer who made the seizure was an experienced (two years and two months)³ member of the Narcotics Squad and on the basis of that experience believed that the bag contained narcotic drugs.
2. On the basis of his experience he knew that the area involved was frequented by drug pushers and drug users.⁴
3. The car in which appellant was seated had just been visited by a known narcotics violator.

Against this factual background appellant suggests, "Appellee would certainly raise to the fore *Dorsey v. United States*, [*supra*]" (Appellant's Brief, p. 8). Appellant's prediction is correct. We submit that *Dorsey* is dispositive.⁵

³ The experience of the officer is always a relevant consideration. *Washington v. United States*, 130 U.S. App. D.C. 144, 397 F.2d 705 (1968).

⁴ This Court has often held that the character of the area in which the arrest occurs is a factor to be considered on the question of probable cause. *Washington v. United States*, *supra*; *Dorsey v. United States*, *supra*; *Freeman v. United States*, 116 U.S. App. D.C. 213, 214, 322 F.2d 426, 427 (1963).

⁵ Appellant's suggestion that *Sibron v. New York*, 392 U.S. 40, 62 (1968), has undercut *Dorsey* is without merit. *Sibron* held that the mere fact that one engages in conversation with a narcotics addict is insufficient to justify "an intrusion by the police upon an individual's personal security." That does not affect a case where, as here, there was no such intrusion until after a seizure of heroin in plain view.

CONCLUSION

WHEREFORE, appellee respectfully submits that the judgment of the District Court should be affirmed.

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